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EXTRAORDINARY

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PART II — Section 2

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

## LOK SABHA

The following Bill was introduced in the Lok Sabha on 6th December, 2005:—

BILL NO. 155 OF 2005

*A Bill further to amend the Income-tax Act, 1961 and the Finance Act, 2005.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India  
as follows:—

### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be called the Taxation Laws (Second Amendment) Act, 2005.

(2) It shall be deemed to have come into force on the 31st day of October, 2005.

Short title  
and com-  
mencement.

### CHAPTER II

#### AMENDMENTS TO THE INCOME-TAX ACT, 1961

43 of 1961.

2. In section 10 of the Income-tax Act, 1961 (hereafter in this Chapter referred to as the Income-tax Act), with effect from the 1st day of April, 2006,—

Amendment  
of section 10.

(a) in clause (6BB), for the words, figures and letters “or entered into after the 30th day of September, 2005 and approved by the Central Government in this behalf”, the words, figures and letters “or entered into after the 31st day of March, 2006 and approved by the Central Government in this behalf” shall be substituted;

(b) in clause (15A), in the proviso, for the words, figures and letters “the 1st day of October, 2005”, the words, figures and letters “the 1st day of April, 2006” shall be substituted;

(c) after clause (38), the following clauses shall be inserted, namely:—

“(39) any specified income, arising from any international sporting event held in India, to the person or persons notified by the Central Government in the Official Gazette, if such international sporting event—

(a) is approved by the international body regulating the international sport relating to such event;

(b) has participation by more than two countries;

(c) is notified by the Central Government in the Official Gazette for the purposes of this clause.

*Explanation.*—For the purposes of this clause, “the specified income” means the income of the nature and to the extent, arising from the international sporting event, which the Central Government may notify in this behalf;

(40) any income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation or transmission or distribution of power if receipt of such income is for settlement of dues in connection with reconstruction or revival of an existing business of power generation:

Provided that the provisions of this clause shall apply if reconstruction or revival of any existing business of power generation is by way of transfer of such business to the Indian company notified under sub-clause (a) of clause (v) of sub-section (4) of section 80-IA;

(41) any income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation or transmission or distribution of power where such transfer is effected on or before the 31st day of March, 2006, to the Indian company notified under sub-clause (a) of clause (v) of sub-section (4) of section 80-IA.’

Amendment  
of section 28.

### 3. In section 28 of the Income-tax Act,—

(a) after clause (iiic), the following clause shall be inserted and shall be deemed to have been inserted, with effect from the 1st day of April, 1998, namely:—

“(iiid) any profit on the transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;”;

22 of 1992.

(b) after clause (iiid) as so inserted, the following clause shall be inserted and shall be deemed to have been inserted, with effect from the 1st day of April, 2001, namely:—

“(iiie) any profit on the transfer of the Duty Free Replenishment Certificate, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;”;

22 of 1992.

Amendment  
of section  
80-HHC.

### 4. In section 80-HHC of the Income-tax Act,—

(i) in sub-section (3),—

(A) after the proviso, the following provisos shall be inserted and shall be deemed to have been inserted, with effect from the 1st day of April, 1998, namely:—

‘Provided further that in the case of an assessee having export turnover not exceeding rupees ten crores during the previous year, the

profits computed under clause (a) or clause (b) or clause (c) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent. of any sum referred to in clause (iiid) or clause (iiie), as the case may be, of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee:

Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent. of any sum referred to in clause (iiid) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee has necessary and sufficient evidence to prove that,—

(a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and

(b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme:

Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent. of any sum referred to in clause (iiie) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee has necessary and sufficient evidence to prove that,—

(a) he had an option to choose either the duty drawback or the Duty Free Replenishment Certificate, being the Duty Remission Scheme; and

(b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Free Replenishment Certificate, being the Duty Remission Scheme.

*Explanation.*—For the purposes of this clause, “rate of credit allowable” means the rate of credit allowable under the Duty Free Replenishment Certificate, being the Duty Remission Scheme calculated in the manner as may be notified by the Central Government:’

(B) after the fourth proviso as so inserted, the following proviso shall be inserted and shall be deemed to have been inserted, with effect from the 1st day of April, 1992, namely:—

“Provided also that in case the computation under clause (a) or clause (b) or clause (c) of this sub-section is a loss, such loss shall be set off against the amount which bears to ninety per cent. of—

(a) any sum referred to in clause (iiia) or clause (iiib) or clause (iiic), as the case may be, or

(b) any sum referred to in clause (iiid) or clause (iiie), as the case may be, of section 28, as applicable in the case of an assessee referred to in the second or the third or the fourth proviso, as the case may be,

the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.”;

(ii) in the *Explanation* occurring at the end, with effect from the 1st day of April, 1998,—

(I) in the proviso to clause (ba), for the word, brackets, figures and letter “and (iiic)”, the brackets, figures, letters and word “(iiic), (iiid) and (iiie)” shall be substituted and shall be deemed to have been substituted;

(II) in clause (baa), in sub-clause (I), for the word, brackets, figures and letter “and (iiic)”, the brackets, figures, letters and word “(iiic), (iiid) and (iiie)” shall be substituted and shall be deemed to have been substituted.

Amendment  
of section  
80-IA.

5. In section 80-IA of the Income-tax Act, in sub-section (4), after clause (iv), the following clause shall be inserted with effect from the 1st day of April, 2006, namely:—

“(v) an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant, if—

(a) such Indian company is formed before the 30th day of November, 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified before the 31st day of December, 2005 by the Central Government for the purposes of this clause;

(b) such undertaking begins to generate or transmit or distribute power before the 31st day of March, 2007.”.

Amendment  
of section  
115W.

6. In section 115W of the Income-tax Act, in clause (a), with effect from the 1st day of April, 2006,—

(a) for sub-clause (iii), the following sub-clause shall be substituted, namely:—

“(iii) an association of persons or a body of individuals, whether incorporated or not;”;

(b) after sub-clause (v), the following proviso shall be inserted, namely:—

“Provided that any person eligible for exemption under clause (23C) of section 10 or registered under section 12AA or a political party registered under section 29A of the Representation of the People Act, 1951 shall not be deemed to be an employer for the purposes of this Chapter;”.

### CHAPTER III

#### AMENDMENTS TO THE FINANCE ACT, 2005

Amendment  
of section 94.

7. In Chapter VII of the Finance Act, 2005 (hereafter in this Chapter referred to as the Finance Act), in section 94, with effect from the 1st day of June, 2005,—

(a) after clause (3), the following clause shall be inserted and shall be deemed to have been inserted, namely:—

“(3A) “banking company” means a company to which the Banking Regulation Act, 1949 applies and includes any bank referred to in section 51 of that Act;”.

(b) after clause (4), the following clause shall be inserted and shall be deemed to have been inserted, namely:—

“(4A) “co-operative bank” shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949;”.

10 of 1949.

8. In Chapter VII of the Finance Act, after section 112, the following section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 2005, namely:—

Insertion of  
new section  
112A.

“112A. The provisions of this Chapter shall not apply to, or in relation to, the taxable banking transactions entered into on or after the 1st day of June, 2005,—

This Chapter  
not to apply  
in certain  
cases.

(a) between a scheduled bank and a banking company or a co-operative bank; or

(b) between a scheduled bank and another scheduled bank.”.

#### CHAPTER IV

##### REPEAL AND SAVING

Ord. 4 of 2005.

9. (1) The Taxation Laws (Amendment) Ordinance, 2005 is hereby repealed.

Repeal and  
saving.

43 of 1961.  
18 of 2005.

(2) Notwithstanding such repeal, anything done or any action taken under the Income-tax Act, 1961 and the Finance Act, 2005, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act.

## STATEMENT OF OBJECTS AND REASONS

The Central Government had, subsequent to the enactment of the Finance Act, 2005, taken certain policy decisions relating to income-tax and banking cash transaction tax and these decisions required immediate legislative action and such decisions, *inter alia*, relate to the following, namely:—

(i) to exempt from income-tax any payment received in respect of a lease of an aircraft or an aircraft engine by the Government of a foreign state or a foreign enterprise from an Indian company engaged in the business of operation of an aircraft under an agreement entered into before the 1st day of April, 2006 and to amend, for the said purpose, clause (15A) of section 10 of the Income-tax Act, 1961;

(ii) to exempt specified income of the persons notified by the Central Government arising from any international sporting event conducted in India, approved by the recognised international body responsible for regulating the relevant sport and having multi-nation participation and to insert, for the said purpose, a new clause (39) in section 10 of the Income-tax Act, 1961;

(iii) to exempt any income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation, transmission or distribution of power if receipt of such income is for settlement of dues in connection with reconstruction or revival of an existing business of power generation taken over by an Indian company, referred to in sub-clause (a) of clause (v) of sub-section (4) of section 80-IA and to insert, for the said purpose, a new clause (40) in section 10 of the Income-tax Act, 1961;

(iv) to exempt any income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation, transmission or distribution of power where such transfer is effected on or before the 31st day of March, 2006, to the Indian company notified under sub-clause (a) of clause (v) of sub-section (4) of section 80-IA and to insert, for the said purpose, a new clause (41) in section 10 of the Income-tax Act, 1961;

(v) to allow tax benefit to an undertaking, owned by an Indian company and set up for reconstruction or revival of a power generating plant, under section 80-IA if it fulfils the following conditions, namely,—

(a) such Indian company is formed before the 30th day of November, 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and is notified before the 31st day of December, 2005 by the Central Government;

(b) such undertaking begins to generate or transmit or distribute power before the 31st day of March, 2007,

and to amend, for the said purpose, section 80-IA of the Income-tax Act, 1961;

(vi) to exempt political parties registered, under section 29A of the Representation of the People Act, 1951, with the Election Commission of India and companies registered under section 25 of the Companies Act, 1956 and section 12AA of the Income-tax Act, 1961 from liability for payment of fringe benefit tax payable under section 115WA of the Income-tax Act, 1961;

(vii) to exempt inter-bank transactions from banking cash transaction tax leviable under Chapter VII of the Finance Act, 2005.

2. As the Parliament was not in session and the amendments to the provisions of the Income-tax Act, 1961 and the Finance Act, 2005 as mentioned above were to be carried out immediately, the President was pleased to promulgate the Taxation Laws (Amendment) Ordinance, 2005 (No. 4 of 2005) on the 31st day of October, 2005 to achieve the aforesaid purposes.

3. In order to extend certain tax incentive to the export business with effect from the assessment year 1998-1999, it is proposed that the deductions allowable under section 80HHC of the Income Tax Act, 1961 for export business may be extended to any profit on transfer of the Duty Entitlement Pass Book Scheme or the Duty Free Replenishment Certificate, subject to certain specified conditions and to amend section 80HHC of the Income-tax Act, 1961 for the said purpose.

4. The Bill seeks to replace the said Ordinance and insert clauses 3 and 4 to give effect to the proposal mentioned in paragraph 3.

NEW DELHI;

P. CHIDAMBARAM.

The 29th November, 2005

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PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE  
CONSTITUTION OF INDIA

[Copy of letter No. 142/29/2005-TPL, dated the 1st December, 2005 from Shri P. Chidambaram, Minister of Finance to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Taxation Laws (Second Amendment) Bill, 2005 to amend the Income-tax Act, 1961 and the Finance Act, 2005, recommends under clause (1) of article 117 and clause (1) of article 274 of the Constitution of India, the introduction of the Bill in Lok Sabha.

*Memorandum explaining the modifications contained in the Taxation Laws (Second Amendment) Bill, 2005 proposed to replace the Taxation Laws (Amendment) Ordinance, 2005 (4 of 2005)*

The Taxation Laws (Second Amendment) Bill, 2005 which seeks to repeal and replace the Taxation Laws (Amendment) Ordinance, 2005 (No. 4 of 2005), proposes to make the following modifications in the provisions contained in the said Ordinance:—

(i) Clause 3 of the Bill seeks to insert new clauses (iiid) and (iiie) in section 28 of the Income-tax Act, 1961 so as to provide that any profit on the transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme or the Duty Free Replenishment Certificate, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 shall be treated as business income. This modification is consequential to the amendment proposed to section 80-HHC of the Income-tax Act, 1961 *vide* clause 4 of the Bill.

(ii) Clause 4 of the Bill seeks to amend section 80-HHC so as to provide that—

(a) in the case of an assessee having export turnover not exceeding rupees ten crores during the previous year, the profits computed under sub-section (3)

of section 80-HHC shall be further increased by the amount which bears to ninety per cent. of any receipt referred to in clause (iiid) or clause (iiie) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee;

(b) in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under sub-section (3) of the said section, shall be further increased by the amount which bears to ninety per cent. of any receipt referred to in clause (iiid) or clause (iiie) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee subject to certain conditions specified in the proposed third and fourth proviso to sub-section (3) of section 80-HHC;

(c) in case the computation under sub-section (3) of section 80-HHC is a loss, such loss shall be set off against the amount which bears to ninety per cent. of any receipt referred to in clause (iiia) or clause (iiib) or clause (iiic) or clause (iiid) or clause (iiie), as the case may be, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

2. These proposed modifications will take effect from the retrospective dates specified in clauses 3 and 4 of the Bill.

P.D.T. ACHARY,  
Secretary-General.